

**FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579**

IN THE MATTER OF THE CLAIM OF

**WILLIAM B. RUDE AND ANDREW T. HEALEY,
AS TRUSTEES OF THE ASSETS OF FOREIGN
INVESTMENTS, INC., A FLORIDA CORPORATION,
NOW LIQUIDATED BY STATUTE**

Claim No.CU -2334

Decision No.CU -1102

**Under the International Claims Settlement
Act of 1949. as amended**

Counsel for claimants:

**Felix, Kniskern, Neuman & Rees
By Lloyd R. Rees, Esq.**

AMENDED PROPOSED DECISION

Under date of January 31, 1968, the Commission issued its Proposed Decision denying this claim for lack of proof. Subsequently, claimants submitted new evidence in support of the claim. Upon consideration of the new evidence the Proposed Decision is amended as follows.

Section 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

The record shows that FOREIGN INVESTMENTS, INC. (hereafter referred to as claimant), was organized under the laws of Florida and that at all pertinent times all of its outstanding capital stock was owned by nationals of the United States. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

It further appears that at all pertinent times claimant owned all of the outstanding capital stock of Petroleum Enterprises, Inc. (Petroleum), a corporation organized under the laws of Florida. The Commission holds that Petroleum Enterprises, Inc., is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The evidence includes certificates from the Secretary of State, State of Florida, indicating that as of May 15, 1953, claimant and its American subsidiary (Petroleum) were dissolved. By virtue of an agreement of March 1, 1941 among claimant's stockholders, one of claimant's stockholders was designated as Trustee to act on behalf of all the stockholders. The agreement was to terminate after 15 years from the date thereof, but apparently was extended thereafter. Counsel states that pursuant to the laws of Florida the members of the last Board of Directors of a dissolved corporation became that corporation's trustees. The record shows that WILLIAM B. RUDE and ANDREW T. HEALEY are the surviving members of claimant's last Board of Directors. No such evidence is available concerning Petroleum Enterprises, Inc.

Section 502(a) of the Act provides, inter alia, that a claim for a stock interest in a corporation which is a United States national shall not be considered. However, the Commission has held that an American corporation being inoperative or defunct, an American stockholder can file a claim based upon his ownership interest in that American defunct corporation. (See Claim of International Telephone and Telegraph Corporation, Claim No. CU-2615.) Accordingly, the Commission holds that the trustees of claimant may maintain a claim based upon claimant's 100% stock interest in Petroleum Enterprises, Inc., which sustained the loss herein.

Based upon a copy of a stock certificate, the Commission finds that Petroleum Enterprises, Inc., owned 1 million shares of Class B stock in Santa Fe Petroleum Company, Inc., (Santa Fe), a Cuban corporation.

The Commission has found that Santa Fe's properties were taken by the Government of Cuba on November 23, 1959; and that its net worth on the date of loss was \$1,918,125.00. (See Claims of Robert F. George, et al., Claim Nos. CU-3580, CU-4972, CU-4973, CU-4974 and CU-5004.)

The record shows that Santa Fe had outstanding 50,000 shares of Class A stock with a par value of \$0.50 per share, and 4 million shares of Class B stock with a par value of \$0.01 per share, therefore, the stock interest

owned by Petroleum Enterprises, Inc., represented a 15.3846% stock interest in Santa Fe. Accordingly, the value of that stock interest on November 23, 1959, the date of loss was \$295,095.86.

On the basis of a copy of indenture certificate, the Commission further finds that Santa Fe owed \$75,000.00 to Petroleum Enterprises, Inc., on the date of loss. The Commission has held that debts of a nationalized Cuban corporation owed to an American claimant constitute losses occurring on the date of nationalization or other taking within the meaning of Title V of the Act. (See Claim of Kramer, Marx, Greenlee and Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1966]; and Claim of International Telephone and Telegraph Corporation, supra.) The Commission therefore finds that Petroleum Enterprises, Inc., sustained a loss in the amount of \$75,000.00 in this respect.

The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered.


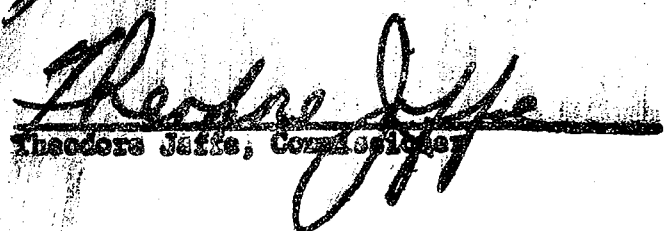
Accordingly, the following Certification of Loss will be entered, and in all other respects the Proposed Decision as amended herein is affirmed.

CERTIFICATION OF LOSS

The Commission certifies that WILLIAM B. RUDE AND ANDREW T. HEALEY, AS TRUSTEES OF THE ASSETS OF FOREIGN INVESTMENTS, INC., A FLORIDA CORPORATION NOW LIQUIDATED BY STATUTE suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Three Hundred Seventy Thousand Ninety-five Dollars and Eighty-six Cents (\$370,095.86) with interest thereon at 6% per annum from November 23, 1959 to the date of settlement.

Dated at Washington, D. C., and
entered as the Amended Proposed
Decision of the Commission

SEP 1 1971


J. S. Garlock, Chairman

Theodore Jaffe, Commissioner

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities or the loss here certified.

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Amended Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended (1970).)

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By: Lloyd R. Rees, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$3,945,000.00, was presented by WILLIAM B. RUDE AND ANDREW T. HEALEY, AS TRUSTEES OF THE ASSETS OF FOREIGN INVESTMENTS, INC., A FLORIDA CORPORATION, NOW LIQUIDATED BY STATUTE and is based upon the asserted ownership of certain security interests and mining properties including mineral concessions.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964) 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 504 of the Act provides, as to ownership of claims that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

Section 502(1) of the Act defines the term "national of the United States" as "(B) a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity."

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

Claimants assert ownership of certain security interests and mining properties including mineral concessions in Cuba, assertedly seized by the Government of Cuba. However, except for photocopies of certain unverified, unauthenticated financial statements, a photocopy of an "Analysis of Santa Fe Petroleum Co., Inc." of February 1, 1958, and their own statements and letters, claimants have submitted no documentary evidence to establish their claim.

By Commission letter mailed September 20, 1967, claimants were advised, through counsel, as to the type of evidence proper for submission to establish this claim under the Act.

Thereafter, by letter of October 27, 1967, the Commission made additional suggestions to claimants, through counsel, concerning the submission of supporting evidence in this matter; counsel were invited to submit any evidence available to them within 45 days from that date, and they were informed, that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record.

However, except as mentioned hereinabove, the suggested evidence has not been submitted.

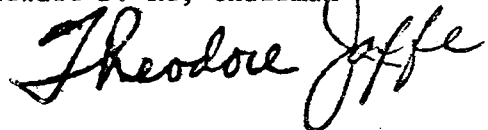
The Commission finds that claimants have not met the burden of proof in that they have failed to establish ownership by a national of the United States of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Thus, the Commission is constrained to deny this claim and it is hereby denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

JAN 31 1968



Edward D. Re, Chairman



Theodore Jaffe, Commissioner

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CU-2334